



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-179 (Public utility tax)**

Date last reviewed: **July 15, 1997**

Current Reviewer: **Mark Mullin**

Date current review completed: **September 18, 2001**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

- Rule 179 explains the application of the public utility tax, including a discussion of the available exemptions and deductions.**

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or



		Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **The following statutory changes should be incorporated into Rule 179:**
 - **RCW 82.16.042 was enacted in 1998 and provides an exemption for water services provided by small water-sewer districts, irrigation districts, or water systems.**
 - **RCW 82.16.046 was enacted in 1998 and provides an exemption relating to operating state route number 16 corridor transportation systems and facilities.**
 - **RCW 82.16.047 was amended in 1999 and provides an exemption for amounts received from ride sharing for persons with special transportation needs.**
 - **RCW 82.16.050 provides a number of deductions. The statute was amended in 2000 affecting the deductions for sales of commodities and sales of electricity.**
 - **Chapter 82.16 RCW was amended in 2001 to provide deductions for water distribution businesses as an incentive to help reduce their customers’ use of water. (See chapter 237, Laws of 2001.)**
- **ETA 209 provides information about the taxability of reimbursements received by a public utility district from a contractor for moving facilities. This information should be incorporated into Rule 179.**
- **The following Determinations contain information that should be incorporated into Rule 179:**
 - **Det. No. 99-233E, 20 WTD 183 (2001) provides that the repeal of RCW 82.04.187 (effective 7-1-93) applies to the income of a utility obligated and pledged to repay bonds before the effective date of the repeal.**
 - **Det. No. 98-187, 19 WTD 328 (2000) and Det. No. 98-208, 19 WTD 332 (2000) provide that the deduction for amounts derived from the distribution of water through an irrigation system for irrigation purposes applies to water used solely for nourishing plant life. The deduction is not limited to water used solely to nourish agricultural crops. The determinations also provide information concerning what constitutes an irrigation system.**



- **The previous review recommended incorporating into Rule 179 information contained in the following interpretive statements which have since been cancelled: ETA 183, ETA 250, ETA 321, and ETA 550.**



- The previous review recommended incorporating into Rule 179 information contained in the following determinations:
 - Det. No. 93-142, 13 WTD 287 (1994). This determination involved the activity of hauling logs. Because the activity of hauling logs is covered by WAC 458-20-13501, it is no longer necessary to incorporate the information provided by this determination into Rule 179.
 - Det. No. 95-002, 15 WTD 106 (1996) and Det. No. 95-201, 15 WTD 166 (1996). Since the previous review, these determinations have been overruled as they pertain to the deduction for amounts derived from the distribution of water through an irrigation system for irrigation purposes.
- 3. Additional information:** Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.
- This rule can be rewritten and reorganized in a more clear and concise manner using the current user-friendly format.
 - There are a number of examples related to the deduction for transportation of commodities to export facilities that involve the hauling of logs. These examples should be removed from Rule 179 as most, if not all, of the examples have been incorporated into Rule 13501.
- 4. LISTING OF DOCUMENTS REVIEWED:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **Chapter 82.16 RCW**

Interpretive statements (e.g., ETAs and PTAs): **ETA 209.16.111**

Court Decisions:

- *Spokane v. Dep’t of Rev.*, 104 Wn. App. 253, 17 P.3d 1206 (2001). This case involved the issue of whether the Department erred by deciding that the point where sewage collection ends for purposes of the public utility and B&O taxes is where the last customer’s sewage feeds into a city sewer pipe for transfer to disposal or for transfer to treatment for disposal. The Court held in favor of the Department, and the Washington Supreme Court has accepted review of the case. Oral argument is scheduled for October 23, 2001.



Board of Tax Appeals Decisions (BTAs):

- ***Olympic Tug and Barge, Inc. v. Dep't of Rev.*, BTA Docket No. 55558 (2001).** The public utility tax issues in this case were: (1) whether the taxpayer was entitled to a public utility tax (PUT) exemption provided by RCW 82.16.050(8) for its fuel bunkering service; and (2) whether the taxpayer was exempt from PUT on its transportation of fuel from a terminal in Puget Sound to a delivery point in Port Angeles when part of the trip occurred in Canadian waters.
- ***Dave Transp. Services v. Dep't of Rev.*, BTA Docket No. 55579 (2001).** The issue in this case was whether a private, for-profit transportation business was entitled to a public utility tax exemption under RCW 82.16.047 with respect to funds received under a contract with a public transit agency to provide transit services to disabled persons and others with special transportation needs.
- ***Spokane v. Dep't of Rev.*, BTA Docket No. 97-60 (1999).** For a description of the issue in this case, please refer to the court case cited above involving the same parties.

Administrative Decisions (e.g., WTDs):

- **20 WTD 204 (2001).** The primary issue in this case was whether RCW 82.16.010(12), defining "gross income," authorized the taxpayer to deduct from the measure of the public utility tax the portion of monthly service charges paid by the utility's customers that was allocated toward the payment of bonds issued for capital facilities construction.
- **20 WTD 183 (2001).** The primary issue in this case was whether the taxpayer was entitled to a public utility tax deduction under RCW 82.04.417 for the portion of its gross income used to pay debt service on bonds issued prior to the repeal of RCW 82.04.417 to finance capital facilities.
- **19 WTD 986 (2000).** For a description of the primary public utility tax issues addressed in this determination, refer to the *Olympic Tug and Barge* BTA case cited above.
- **19 WTD 332 (2000).** The public utility tax issues addressed in this determination were: (1) whether, under RCW 82.16.050(7), the taxpayer was entitled to deduct charges for water that were segregated from domestic water and supplied for the nourishment of plant life; and (2) whether the taxpayer was entitled to deduct a municipal utility tax from the measure of the state public utility tax.
- **19 WTD 328 (2000).** The issue addressed in this determination was whether, under RCW 82.16.050(7), the taxpayer was entitled to deduct charges for water that were segregated from domestic water and supplied for the nourishment of plant life.



- **2 WTD 11 (1986).** The public utility tax issue addressed in this determination was whether the taxpayer, an aluminum manufacturer, was liable for public utility tax where it sold a relatively small amount of water to its wholly-owned subsidiary and to nobody else.

Attorney General's Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None**

5. Review Recommendation:

- X** **Amend**
- Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

➤ **Rule 179 should be amended to:**

- Consolidate information now available in ETAs and WTDs as identified in this review and the previous review.**
- Incorporate legislation enacted subsequent to the last revision of the rule providing public utility tax exemptions and deductions.**
- Refer the reader to other rules addressing the application of public utility tax to specific industries and/or business activities.**
- Reduce the amount of information provided on the income volume exemption for the public utility tax and refer the reader to Rule 104.**



6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4